IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20846 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARULBEN WD/O RAMESHBHAI ZINABHAI & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR MP SHAH for Petitioner(s) : 1 - 2, 2.2.1, 2.2.2,2.2.3 – 5.
MS. KRUTI M SHAH for Petitioner(s) : 1 - 2, 2.2.1,2.2.2 - 5.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3.
MS TEJAL G DOSHI for Respondent(s) : 4 - 5.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/12/2005

ORAL JUDGMENT

Rule. Learned AGP Mr.Gori waives service service of notice of rule on behalf of respondent Nos.1 to 3 and Ms.Doshi waives service of notice of rule on behalf of

respondent No.4 & 5. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioners have challenged the orders passed by the Revenue Authorities by which certain entries in the revenue records were not certified. The disputed entry is entry No.3279 pertaining to certain agricultural lands. The Principal Secretary, in his impugned order dated 14.7.2004 was pleased to confirm the orders passed by the authorities below primarily on the ground that there was understanding between the parties i.e. petitioners and respondent Nos.4 & 5 herein pursuant to which right, title and interest in the properties have been transferred which would attract stamp duty under the Bombay Stamp Act and would also require registration under the Indian Registration Act. The Principal Secretary was of the opinion that there has been breach of the provisions of these Acts. The Principal Secretary therefore rejected the revision application filed by the petitioners.

3. Learned advocate Ms.Shah appearing for the

petitioners submitted that between petitioners and respondent Nos.4 & 5 there have been compromise pursuant to which whatever lands were assigned to respondent Nos.4 & 5, names of the petitioners were deleted therefrom and in that manner, compromise was already acted upon in so far as the share of respondent Nos.4 & 5 is concerned. She submitted that the authorities below erred in not certifying the disputed entry though respondent Nos.4 & 5 had conceded to the same being certified. She further submitted specially when the petitioners are put to disadvantageous situation whereby revenue entries pertaining to the lands which were assigned to respondent Nos.4 & 5 have been made and certified, dispute would remain outstanding so far as entry which is favourable to the petitioners and which is required to be made as per the compromise in respect of the land which is assigned to the petitioners is concerned. Ms.Doshi appearing for respondent Nos.4 & 5 states under instructions of the said respondents, out of them she says respondent No.4 is present before the Court, that these respondents abide by the terms of compromise and have no objection if entry No.3279 is certified.

4. Learned AGP Shri Gori appearing for respondent

Nos.1 to 3 submitted that even if the said entry is ordered to be made, the same in no way should affect the questions of payment of proper stamp duty under the Bombay Stamp Act or the non-registration of the document of compromise in question or the possible application of the provisions of section 73AA of the Bombay Land Revenue Code as also the question of breach of the provisions contained in section 43 of the Bombay Tenancy and Agricultural Lands Act.

5. Considering the above factual aspects of the matter, when the parties have arrived at a compromise whereby separate parcels of land have come within the possession of different groups and especially when part of the compromise has already been acted upon by certifying entries made in favour of one of the groups, one represented by respondent Nos.4 & 5, in so far as dispute No.3279 is concerned, the same should be made in favour of the petitioners. This is without in any manner affecting the impact of the provisions contained in the Bombay Stamp Act, Indian Registration Act, Bombay Land Revenue Code or the provisions contained in the Bombay Tenancy and Agricultural Lands Act. Even otherwise, entires in the revenue records would create no

independent rights and making of or certifying of the said entry is not meant to affect in any manner the implications of any of the provisions of law. It is and it will be always open for the authorities to inquire into any alleged breach independently. At the same time, if so raised, the authority or the Court will also bear in mind the contentions of the petitioners that there has been no breach of any legal provisions since the compromise is only a family arrangement and the same does not attract any stamp duty or requirement of registration.

6. Subject to the above observations, it is directed that the respondents shall certify entry No.3279. Rule is made absolute to the above extent with no order as to costs.

Direct service.

(Akil Kureshi, J.)

(vjn)